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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
10 029,098	12 20 2001	Darrell C. West	6521-206	3444

7590 04 10 2003
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EXAMINER

BRUCE, DAVID VERNON

ART UNIT	PAPER NUMBER
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2882

DATE MAILED: 04 10 2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/029,098

Applicant(s)

WEST ET AL

Examiner

David V Bruce

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-68 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 25-46 is/are allowed.
- 6) ☐ Claim(s) 1,4-24,47 and 55-68 is/are rejected.
- 7) ☐ Claim(s) 2,3 and 48-54 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2 6) ☒ Other: See Continuation Sheet

Continuation of Attachment(s) 6). Other: Irregular line weight of reference numerals and figure numbers in figures 1. and 3-7.

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DETAILED ACTION

Specification

1. The abstract of the disclosure is objected to because it is longer than 150 words.

Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States

3. Claims 15-17, 19-24, 47, and 55-67 rejected under 35 U.S.C. 102(b) as being anticipated by Flannery *et al.* US 4,833,698. Flannery *et al.* shows 3D x-ray microtomography where the sample is rotated and the resolution is as small as ½ micron (column 1 line 53 – column 2 line 9). That the sample contains cellulose or is wood is merely intended use and is given no patentable weight for apparatus claims.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 4-14 rejected under 35 U.S.C. 103(a) as being unpatentable over Flannery *et al.* US 4,833,698. Flannery *et al.* shows all of the features of the instant invention except for the use of a sample which is cellulose containing, such as wood or wood products. Tomography and

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microtomography are well known methods of non-destructively examining wood and wood products. It would have been obvious to one of ordinary skill at the time of the instant invention to use the method of Flannery *et al.* to nondestructively test cellulose-containing samples, motivated by the desire to save money by not destroying the sample during testing.

6. Claims 18 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Flannery *et al.* US 4,833,698 as applied to claims 15, 60, and 67 above, and further in view of Muller *et al.* US 5,493,593 A. Flannery *et al.* shows all of the features of the instant invention except for the placement of the sample closer to the source than the detector. Müller *et al.* shows placement of the sample closer to the source than the detector (figure 19B). It would have been obvious to one of ordinary skill in the art at the time of the instant invention to place the object closer to the source than to the detector motivated by the desire to save money by using geometric optics to magnify the image.

Allowable Subject Matter

7. Claims 25-46 are allowed.

8. Claims 2, 3, and 48-54 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. The following is a statement of reasons for the indication of allowable subject matter: In the microtomographic system and method as claimed, the prior art fails to show or fairly suggest determining cellular dimensions, sorting of cellulose containing samples, or detecting wood destroying insect damage.

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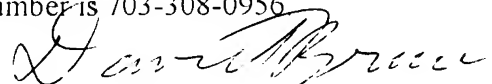
Conclusion

10 The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnson *et al.* US 5,402,460 A, Kuriyama *et al.* US 5,259,013 A, and Cueman *et al.* US 4,870,279 show x-ray microtomography.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David V Bruce whose telephone number is 703-308-0856. The examiner can normally be reached on M - Th and alt Fri 8:00 - 4:30 subject to I-Flex..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert H Kim can be reached on 703-305-3492. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 for regular communications and 703-308-7722 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.



David V Bruce
Primary Examiner
Art Unit 2882

dvb
April 3, 2003